

July 27, 2010

Tri-County Electric Cooperative, Inc.	:	
-vs-	:	
Illinois Power Company	:	
d/b/a AmerenIP	:	
	:	05-0767
Complaint under the Electric Supplier Act.	:	

ADMINISTRATIVE LAW JUDGE'S RULING ON MOTION TO COMPEL FILED JUNE 21, 2010

Preliminarily, it is observed that In Commission proceedings, prepared testimony filed by a party ("offering party") frequently includes prepared testimony of witnesses who are not employees of that party ("outside witnesses"). Other parties and the Commission Staff routinely submit data requests ("DRs"), to the offering party, regarding the prepared testimony of the outside witnesses. Putting aside other objections, the offering party, in return, routinely obtains responses to those DRs from the witness (or through counsel for the witness' employer where appropriate) and causes them to be sent to the requesting party. This happens dozens of times each year, and, incidentally, includes many instances involving AmerenIP or other Ameren Illinois Utilities.

The assertion by an offering party that it lacks "possession" of the requested information does not, in and of itself, form a sufficient basis for refusing to provide the information. Thus, one of AmerenIP's primary arguments, that it does not "possess" the information relating to testimony by outside witnesses testifying for AmerenIP, is not availing. Similarly, the fact that AmerenIP lacks possession of the requested information does not necessarily mean that such information is unavailable or inaccessible to AmerenIP.

DR 1: AmerenIP shall provide copies of the OG-10 permit application, OG-9 well completion report and OG-5 well drilling report.

DRs 2 and 3: Among other things, AmerenIP asserts that the requested information is beyond the scope of Mr. Garden's testimony. However, AmerenIP Exhibit 10.1, sponsored by Mr. Garden, shows the locations of tank batteries. Absent an indication from AmerenIP that it will not be relying upon such information in support of its arguments in this proceeding, Tri-County is entitled to obtain the requested information from AmerenIP, and AmerenIP shall provide it, to the extent AmerenIP is able to obtain it from Citation Oil and Gas Corp. ("Citation"). If AmerenIP is unable to obtain it from Citation for that purpose, then motions to strike or limit the testimony, if any are filed, will be considered.

DR 4: Among other things, AmerenIP asserts that Tri-County has not explained how the request is relevant to the testimony of AmerenIP witnesses. However, AmerenIP Exhibit 10.1, sponsored by Mr. Garden, shows the locations of the "lime transit trunkline" and other facilities which are the subject of the DR. Absent an indication from AmerenIP that it will not be relying upon such information in support of its arguments in this proceeding, Tri-County is entitled to obtain the requested information from AmerenIP, and AmerenIP shall provide it, to the extent AmerenIP is able to obtain it from Citation. If AmerenIP is unable to obtain it from Citation for that purpose, then motions to strike or limit the testimony, if any are filed, will be considered.

DR 5: This DR relates to information on AmerenIP Exhibit 10.1. AmerenIP's DR-specific responses are that it has produced what information it has; that it is not required to produce a new exhibit; that the term "service connection point" is vague; and that Tri-County already deposed Mr. Garden and inspected the facilities. The ruling is that AmerenIP shall identify the location of the subject facilities subject to the terms and conditions of the DR 2, 3 and 4 rulings above. Whether or not the response takes the form of a map combining Exhibits 10.1 and 10.2 will be left to the discretion of AmerenIP. The response is not required to interpret, or use, the term "service connection point." Different terminology may be used.

DR 6: AmerenIP's DR-specific responses are that it has produced what information it possesses; and that Tri-County already deposed Mr. Garden and Mr. Herr and inspected the facilities. The ruling is that AmerenIP shall provide the information requested in DR 6 to the extent AmerenIP is able to obtain it from Citation. If AmerenIP is unable to obtain it from Citation for that purpose, then motions to strike or limit the testimony, if any are filed, will be considered.

DR 7: This DR relates to AmerenIP Exhibit 11.4. AmerenIP shall provide the information requested subject to the terms and conditions of the DR 2, 3 and 4 rulings above. Whether information is provided by means of notations on Exhibit 11.4, or in some other manner, will be left to the discretion of AmerenIP. The response is not required to interpret, or use, the term "electric connections"; different terminology may be used. In addition, Tri-County, which acknowledges that it has obtained "some information" sought in DR 7, shall provide clarification, to AmerenIP, regarding the information still being sought.

DR 8: AmerenIP shall provide the information requested in DR 8 to the extent AmerenIP is able to obtain it from Citation. If AmerenIP is unable to obtain it from Citation for that purpose, then motions to strike or limit the testimony, if any are filed, will be considered. The response is not required to interpret, or use, the term "electric service connection"; different terminology may be used. In addition, Tri-County, which acknowledges that it has obtained "some information" sought in DR 8, shall provide clarification, to AmerenIP, regarding the information still being sought.

DR 9: AmerenIP asserts that Tri-County has not explained how "much" of the information requested is relevant to the testimony of AmerenIP witnesses; however, which information is covered by this objection is not indicated, and Tri-County did not directly respond to this objection in its reply. Similarly, Tri-County complains that "not all" of the requested information has been provided; however, which information has been obtained versus that still being sought is not indicated. Given these considerations, along with the amount and nature of information being requested, the formulation of an informed ruling based on the existing arguments is problematic. Leave will be given to make supplemental filings with regard to DR 9.

DR 10: AmerenIP shall provide the information requested in DR 10 to the extent AmerenIP is able to obtain it from Mr. Herr. If AmerenIP is unable to obtain it for that purpose, then motions to strike or limit the testimony, if any are filed, will be considered. The response is not required to interpret, or use, the term "service connection point." Different terminology may be used.